IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9182 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DISTRICT DEVELOPMENT OFFICER

Versus

K I PARMAR

Appearance:

1. Special Civil Application No. 9182 of 1999

MR HS MUNSHAW for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1

MR MEHUL S SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order

dated 30/08/99 passed by the Gujarat Civil Services Tribunal, Gandhinagar, in Appeal No.396/1997 at Annexure `J' to the petition, whereby the Appeal of the respondent was partly allowed to the extent that the order of dismissal was substituted by imposing a penalty of stoppage of three increments with future effect.

2.0 The brief facts of the case are that the respondent herein was an employee of the petitioner Panchayat and was working as a Senior Clerk. It was alleged against the respondent that he was involved in a case of misappropriation of public funds to the tune of Rs.5,880.80/-. When the said case of misappropriation was noticed and the respondent was exposed, he addressed a letter dated 27/08/82 to the District Development Officer admitting the said irregularity.

2.1 Charge sheet was issued and inquiry was initiated against the respondent. The Inquiry Officer gave a finding that the charges against the respondent were proved, and therefore, show cause notice dated 17/06/85 was issued to the respondent. The respondent submitted his reply to the aforesaid notice. Thereafter, by order dated 20/10/86, the petitioner District Development Officer, dismissed the respondent from service.

2.2 Feeling aggrieved by the orders of dismissal, the respondent preferred Appeal before the Additional Development Commissioner, Gandhinagar at Annexure `I' to the petition. By order dated 24/11/97, the Appeal of the respondent was rejected. Against the said order, the respondent preferred appeal being Appeal No.396/1997 before the Gujarat Civil Services Tribunal, Gandhinagar. By order dated 30/08/99 at Annexure `J' to the petition, the Tribunal quashed the order of dismissal and substituted the penalty by imposing a penalty of stoppage of three increments with future effect. Hence, this petition.

3.0 Mr.H S Munshaw learned advocate for the petitioner has submitted that considering the fact that the petitioner has misappropriated an amount of Rs.5,880.80/- and his own admission to that effect by letter dated 27/08/82, clearly establishes the guilt on the part of the respondent. Therefore, the Tribunal ought not to have substituted the penalty of dismissal imposed on the respondent.

3.1 Mr.Munshaw has further submitted that the Tribunal ought to have appreciated the fact that the Disciplinary Authority has not agreed with the findings

of the Departmental Inquiry Officer and had instead issued show cause notice assigning the reasons for disagreement with the Inquiry Officer's report and asking the respondent as to why he should not be dismissed from service.

4.0 It may be noted here that the Tribunal, at the first instance, had remanded the matter back and the respondent had preferred appeal being Appeal No.470/1993 which was disposed of on 06/05/94 with a direction to the Authorities to give a reasoned order. The Authorities as per the said direction, gave a speaking order by order dated 01/05/96. The Tribunal, ultimately, came to the conclusion that the penalty imposed was disproportionate and therefore substituted the penalty by imposing a penalty of stoppage of three increments with future effect.

5.0 Mr.Shah for the respondent has taken me through the inquiry report at Annexure `C' to the petition, whereby the Inquiry Officer has given a finding that from the records no misappropriation was proved against the respondent but it was a case of irregularity. Despite the aforesaid report of the Inquiry Officer, the respondent was dismissed from service.

5.1 Mr.Shah for the respondent has submitted that the incident is of 1982 and the respondent was put under suspension all throughout, till he attained the age of superannuation. He has therefore submitted that sufficient penalty has been imposed on the respondent and even the penalty of stoppage of three increments with future effect is on the higher side and the same should not have been imposed by the Tribunal. He has submitted that the pendency of other litigations which the respondent was required to face all throughout has caused great mental agony to the respondent. Therefore, he calls for interference by this Court under Article 227 of the Constitution of India.

6.0 I have gone through the evidence on record and the order of the Tribunal. From the findings of the Inquiry Officer, it is clear that the activity alleged against the respondent is not of misappropriation but of irregularity. Moreover, the alleged act of misappropriation has not been proved. While disagreeing with the findings of the Inquiry Officer, the Authority has issued Notice and has imposed the penalty of dismissal. The Tribunal, while dealing with the said penalty, had remanded the matter back in May 1995 but the Authority confirmed the same order. Therefore, the

Tribunal substituted the penalty, instead of remanding the matter back to the Disciplinary Authority. In my view, the jurisdiction exercised by the Tribunal is just and proper and no interference is required by this Court under Article 227 of the Constitution of India, and more particularly, when the Tribunal has sufficiently punished the respondent and considering the fact that the respondent was under suspension for a long period of time. Hence, the petition is required to be dismissed.

7.0 For the foregoing reasons, the petition is dismissed. Rule is discharged with no orders as to costs. Interim relief granted earlier stands vacated.

(K. S. Jhaveri, J.)

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